



| PRE-APPEAL BRIEF REQUEST FOR REVIEW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                      | Docket Number (Optional) |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Application Number   | Filed                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 10/829,393           | April 22, 2004           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | First Named Inventor |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                      | ITOI                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Art Unit             | Examiner                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 3714                 | Torimiro, A.             |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).<br/>Note: No more than five (5) pages may be provided.</p> <div><div><p>I am the</p><p><input type="checkbox"/> Applicant/Inventor</p><p><input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> Attorney or agent of record</p><p><input type="checkbox"/> Attorney or agent acting under 37CFR 1.34.</p></div><div><p>41,426<br/>(Reg. No.)</p><p>February 27, 2009<br/>Date</p></div><div><p>Signature</p><p>Raymond Y. Mah</p><p>Typed or printed name</p><p>703-816-4044<br/>Requester's telephone number</p></div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p> |                      |                          |

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

ITOI et al.

Atty. Ref.: RYM-723-1512

Serial No. 10/829,393

TC/A.U.: 3714

Filed: April 22, 2004

Examiner: Torimiro, A.

For: ATTACKING A VIRTUAL ENEMY BY  
CORRESPONDING INPUT TO OUTPUT SOUND

\* \* \* \* \*

February 27, 2009

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Pursuant to the OG Notice of July 12, 2005, applicant hereby requests a pre-appeal brief review of this case for at least the following reasons. Applicant also petitions for a one-month extension of time.

All claims 1-44 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Itou (U.S. Patent No. 6,439,998) in view of Nakatani et al. (U.S. Patent No. 5,720,663), Komoto (U.S. Patent No. 6,273,814), Okita et al. (U.S. Patent No. 6,422,945) and Suzuki et al. (U.S. Patent No. 5,592,609). This five-way Section 103 rejection should be reversed for at least the following reasons.

Claim 1 recites "one or more second storage locations for storing, for a plurality of enemies, one or more operation timing patterns indicating the optimal timing of one or more sequential player inputs to be input in association with a corresponding enemy." A

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first example operation timing pattern is shown in Figs. 7a-7c, and a second example operation timing pattern is shown in Figs. 7d-7i. From these illustrative figures, it is clear that more than mere “waiting” is required by claim 1 -- quite the contrary, an enemy character actually is moving according to these example patterns.

Fig. 8a provides one example of how such illustrative operation timing patterns may work together with one or more sequential player inputs. That is, Fig. 8a shows a small and large amount of the damage depending upon the operation timings and the player input. In the Fig. 8a example, when the player operates a button when the instruction image reaches the lowermost position or comes near thereto, the attack is regarded as a success, and it is possible to damage the enemy character. In the Fig 8a example, the damage to be applied to the enemy character is greatest when a timing of an attacking operation by the player (operation timing) and a timing of the instruction image being displayed at the lowermost position are coincident with each other and, as a degree of coincidence becomes lower, the damage to be applied to the enemy character becomes gradually smaller. Additionally, if the degree of coincidence is out of a constant value, that is, if the operation timing exceeds the predetermined range, the attack is regarded as a failure, and no damage is applied to the enemy character.

Given the above, Applicant respectfully submits that the claims essentially require the enemy character and the player character to be capable of simultaneous movement and attack. Applicant further submits that this feature is inherently required so that the parameter of the enemy character can be updated based on the combination of the operation timing pattern and the sequential player inputs. Because the alleged

combination of references only teaches the enemy character and the player character taking turns moving and attacking as Applicant previously argued and as the Final Office Action has now admitted, the alleged combination of references simply cannot disclose the capability for simultaneous movement and attacking on the part of the enemy character and the player character. Thus, the alleged five-way combination of references fails to teach or suggest each and every limitation of the independent claims.

Page 22 of the Final Office Action appears to argue that Itou teaches a “general fighting time.” According to the Final Office Action, as long as the game player fights against a computer-controlled enemy character, “the time controlled for the player is also changed for the enemy.” The Final Office Action goes on to allege that “while the active or wait time varies for the player controlled character, it is also controlled to affect the enemy character.” Presumably, these statements mean that in a game where a player character and a computer-controlled enemy character take turns fighting, the active or wait time of one character will affect the other character.

However, Applicant previously pointed out that this position is a slightly inaccurate interpretation of what Itou actually teaches. That is, col. 6, line 58 to column 7, line 5 of Itou actually states that:

“The term the ‘waiting time’ as herein used means a time required for a character from the completion of an action until it can execute the next action. During waiting, i.e., after the completion of an action, the character cannot conduct any action until the measured time reaches the set value of waiting time. When the set value of waiting time is large, i.e., with a long waiting time, the character cannot frequently execute actions during a battle, and susceptible to attack from the enemy character during waiting, thus putting the character at a disadvantage. When the set value of waiting time is small, i.e., with a short set time of waiting time, in contrast, the character can frequently conduct actions during a battle, thus

permitting more attacks than from the enemy character during waiting, leading to a more favorable position” (emphasis added).

Thus, it is clear that Itou merely teaches temporarily pausing the action of a particular character for a predetermined “waiting time.” It is perhaps not surprising that characters that are paused for a long time (i.e., have a long waiting time) are more susceptible to attack than characters that are paused for a short time (i.e., have a short waiting time). Itou merely teaches a delay time between enemy actions and hints at some of the possible consequences of such delay times.

Based on this reasoning, Applicant previously argued that the alleged five-way combination of references, at best, teaches the taking of turns. Apparently, the Examiner now agrees with Applicant. That is, the Examiner admits on pages 22-23 of the Final Office Action that the alleged combination of references teaches a so-called “pattern” that merely involves an enemy character and a player character taking turns in a game. Accordingly, it seems that the Examiner and the Applicant are in complete agreement -- the alleged five-way combination of references merely teaches the taking of turns. Because the taking turns simply does not correspond to the claimed operation timing patterns or the claimed sequential player inputs, the alleged five-way combination of references fails to teach or suggest each and every feature of the independent claims. Thus, the alleged five-way combination of references fails to render obvious the claimed invention.

In a nutshell, because Itou merely teaches a delay time between enemy actions -- which amounts to nothing more than the mere taking of turns -- and hints at some of the

possible consequences of imposing such delay times and an attack regimen where turns are taken, it clearly fails to teach or suggest operation timing patterns indicating the optimal timing of one or more sequential player inputs to be input in association with a corresponding enemy. As such, Applicant respectfully submits that the alleged Itou/Nakatani/Komoto/Okita/Suzuki five-way combination fails to render obvious claim 1 and claims 14, 25, 36, 38, 43, and 44, which include corresponding features.

For at least the reasons set forth above, Applicant respectfully submits that claims 1-44 clearly and patentably distinguish over the applied references -- alone and in combination. Thus, Applicant respectfully requests that all rejections be withdrawn. All claims are in condition for allowance.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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